

**MARION AG SERVICE, INC.
TERMS AND CONDITIONS OF BUY**

1. APPLICATION:

Unless otherwise agreed in a formal written contract signed by both parties, these Terms and Conditions of Buy are incorporated into and form part of the Agreement, which comprises the basis on which Marion Ag Service, Inc., an Oregon Corporation, including any of Marion Ag Service, Inc.'s Affiliates (collectively, "Buyer") purchases product and/or sendees related to such product together ("Product"). This Agreement shall apply to all sales of Product by Seller from Buyer and its terms are incorporated into and made part of any Order Confirmation and/or Invoice from Buyer. "Order Confirmation" includes the confirmation from Buyer to Seller prior to shipment or delivery of any Product ordered by Seller, whether by internet, e-mail, fax, or telephone, as well as any signed Purchase Order, if any. By accepting shipment of the Product by Buyer, Seller agrees to be bound by and accepts the terms and conditions set forth herein. These terms and conditions are subject to unilateral change by Buyer in Buyer's sole discretion for future transactions, and from that point forward. Buyer may condition any or all future purchases from Seller upon Seller's acceptance of such changed terms.

2. PAYMENT AND CREDIT TERMS:

- (a) Required payment terms are stated in the Order Confirmation and will be the basis for the Invoice. Order Confirmations for delayed or future delivery ("Forward Buy(s)") will confirm Seller's binding order any required down payment. Seller's Forward Buy down payment is nonrefundable, confirms acceptance, and binds the Seller to accept delivery and make full payment.
- (b) Upon application and approval of credit. Buyer may assign Seller a maximum credit amount ("Credit Limit"). Buyer has the right to reduce the Credit Limit and/or withdraw Seller's credit under any Credit Agreement at any time without prior notice, except as otherwise provided by law. Buyer reserves the right to revoke creditor demand full payment if Seller fails to pay when due or, in the sole discretion of Buyer, there has been an adverse change in Seller's ability to repay credit extended by Buyer, whereupon Buyer shall have the right to demand payment or other assurance which it deems adequate and Buyer is hereby authorized to file any lien available to vendors and/or applicators of the Products in the manner provided by applicable law notwithstanding the terms of invoices or other documents or the existence of an event of default by Seller under this or any other agreement between Seller and Buyer shall be a default under all agreements. Buyer does not waive its right by accepting late payments. Seller agrees to pay reasonable attorney fees and costs of collection, including any incurred in proceedings due to insolvency or bankruptcy. Seller is responsible for all financial and other obligations to Buyer under this Agreement, even if there is a change in the ownership, structure or type of entity that Seller is: and Seller will notify Buyer promptly in writing if any of those changes occur.
- (c) If, in Buyer's judgment. Seller's credit shall become impaired at any time. Buyer shall have the right to decline to make shipment hereunder or may restrict shipments to an acceptable letter of credit, cash advance or other terms acceptable to Buyer,
- (d) As a general and continuing security for the payment of all sales from Buyer and the payment and performance of Seller of all indebtedness, liabilities and obligations of the nature, however arising, whether monetary or otherwise, now existing or hereafter arising in favor of Buyer, Seller shall upon request by Buyer, deliver to Buyer, in form and substance satisfactory to Buyer, in its sole discretion, a general security agreement ("Security Agreement") granting a security interest in favor of Buyer in some or all of Seller's presently owned or hereafter acquired property, assets, rights, benefit, privileges and undertakings of every nature and kind, real or personal, moveable or immovable. Seller further agrees to deliver to Buyer such further security agreements, deeds or other instruments of conveyance, assignment, transfer, mortgage, pledge or charge (the "Supplemental Agreements") as Buyer may reasonably request to effectively take security in the above mentioned property of Seller. Shipment of Product may not commence until Seller has executed and delivered to Buyer the Security Agreement and the Supplemental Agreements, if any.
- (e) The Buyer shall have the right in its sole discretion, to apply any monies due from the Seller under any contract between the Buyer or any of its Affiliates and the Seller toward the payment of any sums which the Seller may now or hereafter owe to the Buyer or the Buyer's Affiliates under any agreement. In addition, in the event that the Seller defaults in payment due to the Buyer, the Buyer shall have the right to withhold any unpaid sums due by the Buyer or any of its Affiliates to the Seller under any contract with the Seller and to apply such sums to the amount owing by the Seller to the Buyer or any of Buyer's Affiliates.

3. PRIVACY NOTICE:

By providing personal information to Buyer. Seller is consenting, to the extent that such consent is required by law, to the collection, use and disclosure of this information by Buyer to enable Buyer to establish, maintain and manage a relationship with Seller.

4. TAXES:

The Seller shall pay all government purchases and excise taxes on the Product. Any tax or governmental charge enacted or increased as of or after the date of this Agreement, which is payable by Buyer or which increases Buyer's cost of Selling, processing, transporting, delivery or buying products to Seller, other than taxes on income, shall be paid by Seller to Buyer, in addition to the price specified herein. All import duties, taxes, wharfages, customs duty or other charges of whatsoever nature directly or indirectly applicable or relating to the import of the products into the importing country shall be for Seller's account.

5. DELIVERY/TITLE/RISK OF LOSS:

- (a) Deliveries may, at Buyer's option, be spread over the period specified in the Order Confirmation. Any failure by Seller to promptly provide reasonable notice of a delivery schedule or to take delivery of any scheduled shipment of Product hereunder shall entitle Buyer, at its sole option, and in addition to any other rights or remedies to which Buyer may be entitled at law or in equity, to terminate the remaining portion, if any, of the Order Confirmation.
- (b) For all Railcar deliveries under the Order Confirmation, Seller is solely responsible for offloading or unloading all Product. To the extent the Seller fails to offload or unload the entire quantity of Product from the railcar, (i) any residual or remaining Product shall be deemed to have been abandoned by Seller for the beneficial use or re-use by Buyer, and will become the property of Buyer when received and accepted sell Buyer at Buyer's facility; (ii) Seller will not receive credit, payment, or other consideration for any such residual or remaining Product; and (iii) Seller is solely responsible for the transportation of such residual or remaining Product (including freight charges, shipping documents, and

compliance with all laws, rules and regulations related thereto) until received and accepted by Buyer at Buyer's facility.

- (c) For railcar deliveries, title to and risk of loss of the Product shall pass from Buyer to Seller upon the earlier of (i) Constructive Placement or (ii) Actual Placement, in each case, reported by the applicable railroad's car location message C'CLM"). "Constructive Placement" shall mean when a rail car cannot be actually placed or delivered to the consignee or unloader, and as a result, such rail car is held on railroad tracks awaiting instructions from the consignee or unloader. and is reported by the railroad through the CLM system as constructively placed on a specified date and time. "Actual Placement" shall mean when a rail car is placed in or delivered to an accessible position for unloading, or to a point designated by the consignee or unloader. and is reported by the railroad through the CLM system as placed on a specified date and time. For truck deliveries, title and risk of loss shall pass as set forth in the Order Confirmation.
- (d) Equipment/unsafe conditions: Buyer may reject any rail cars, trucks, transports, pipelines, barges, vessels, containers or storage presented for loading/unloading/transfer of Product, which present, in its sole discretion, an unsafe or potentially unsafe situation Buyer may refuse to unload, transfer or handle any Product under any conditions which it deems, in its sole discretion, unsafe or potentially unsafe, including, without limitation, any conditions caused by Product, drivers, personnel, equipment, procedures and/or adverse weather conditions.
- (e) Hazmat Laws: If and to the extent Seller or its agent or contractor loads, unloads or ships "hazardous materials" (as designated in accordance with 49 C.F.R. Parts 100-185, as amended from time to time) purchased by Buyer, then Seller hereby warrants that all such materials shall be prepared for shipment, loaded, shipped and unloaded in compliance with all applicable laws, rules, regulations, orders, and other requirements of federal, state, provincial and local governments aid agencies thereof, regarding the handling and transportation of hazardous materials.

6. REMEDIES AND TERMINATION:

- (a) If the Seller shall default in the payment of any amount for a period often (10) days beyond the due date of such payment, the Buyer shall, in its own discretion and without prior notice to Seller, may do any one or more of the following: (i) suspend performance under the Order Confirmation or any other agreement between Seller and Buyer; (ii) terminate the Order Confirmation or any other agreement between Seller and Buyer, whereby any and all obligations of Seller, including payments or deliveries due, will, at the option of Buyer, become immediately due and payable or deliverable, as applicable; and/or (iii) Set-off against any amount that Buyer (or any of its affiliates) owes to Seller (or any of its affiliates) under the Order Confirmation or any other agreement between or among any such parties. If Buyer suspends performance and withholds delivery of the Product as permitted above, it may buy the Product to a third party and deduct from the proceeds of such buy the sale price and all reasonable costs resulting from Seller's default as identified above, including, without limitation, all costs associated with the transportation (including demurrage and other vessel or shipping related charges), storage, and buy of the Product.
- (b) Buyer expressly reserves the right to cause the liquidation or cancellation of this Agreement because of: (i) the insolvency or financial condition of the Seller; (ii) the commencement of a case or the appointment of or a taking of possession by trustee or custodian under 11 U.S.C. Section 101 et seq. or successor legislation in effect as of the date hereof; (iii) any and all other defaults of the terms and conditions specified herein; or (iv) the institution or price of quantity controls by any government, governmental agency or governmental authority which are lower than the price or less than the quantity set forth in the Order Confirmation or Invoice.
- (c) Seller agrees and understands that in the event that any amounts that are not paid in accordance herewith. Buyer may assign or enforce the same for collection. Buyer does not waive its right by accepting late payments. Seller agrees to pay reasonable attorney fees and costs of collection, including any incurred in proceedings due to insolvency or bankruptcy.

7. WARRANTIES, QUALITY, AND ASSUMPTION OF RISK:

Buyer warrants only that it has good title to any product sold and such product conforms to its stated specifications. **EXCEPT AS OTHERWISE EXPRESSLY SET FOR I II HEREIN, BUYER MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS OF THE PRODUCT FOR ANY PARTICULAR PURPOSE.** Buyer may measure, sample and test Product in its customary manner at the loading location to determine the quantity and quality of Product delivered. The results of such measurement, sampling and testing shall be treated, in the absence of fraud or manifest error, as conclusive and binding as to the quantity and quality of Product loaded. The Seller represents that it is familiar with the characteristics, qualities and uses of the Product it is selling from the Buyer and that the Seller is not relying on the Buyer's skill or judgment to select or furnish the Product suitable for any particular purpose. The Seller assumes all risk and liability for the use of the Product, whether alone or in combination with other materials.

8. INDEMNIFICATION:

To the fullest extent permitted by law. Seller shall defend, protect, indemnify, and save Buyer harmless from misuse, disposal, and/or environmental release of Product sold hereunder while title is held by Seller or Product is under Seller's control.

9. LIMITATION OF LIABILITY:

- (a) **BUYER'S MAXIMUM LIABILITY TO THE SELLER ON ANY CLAIM OF ANY KIND FOR ANY LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH OR RESULTING FROM THE SALE OF PRODUCE BY SELLER FROM BUYER OR FROM THE PERFORMANCE OR BREACH OF ANY AGREEMENT PERTAINING THERETO, INCLUDING BUT NOT LIMITED TO THIS AGREEMENT, SHALL BE LIMITED TO THE SALE PRICE FOR THE PRODUCT WITH RESPECT TO WHICH SUCH MATTER ARISES OR SUCH CLAIM RELATES.**
- (b) **NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, NEITHER PARTY NOR ITS AFFILIATES, NOR ITS OR ITS AFFILIATES' RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS OR SUBCONTRACTORS SHALL BE LIABLE TO THE OTHER PARTY, ITS AFFILIATES OR ITS OR ITS AFFILIATES' RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, CONTRACTORS OR SUBCONTRACTORS, FOR ANY INDIRECT INCIDENTAL OR CONSEQUENTIAL DAMAGES THAT MAY BE SUFFERED OR INCURRED BY ANY SUCH PARTY, INCLUDING BUT NOT LIMITED TO/AND/OR COSTS OR CLAIMS ARISING FROM THIRD PARTY CONTRACTS, DOWN TIME, LOST PRODUCTION TIME, OR BUSINESS INTERRUPTION. THE LIMITATIONS ON, AND RELEASES FROM, LIABILITY EXPRESSED HEREIN SHALL APPLY REGARDLESS OF HOW CAUSED AND UNDER ANY THEORY OF LIABILITY, INCLUDING WITHOUT LIMITATION, NEGLIGENCE (IN WHOLE OR IN PART), STRICT LIABILITY, BREACH OF CONTRACT, DEFAULT OR OTHERWISE, OF THE PARTY WHOSE LIABILITY IS LIMITED, AND SHALL EXTEND TO ITS AFFILIATES AND ITS AND THEIR DIRECTORS, OFFICERS, AND EMPLOYEES, AND SHALL SURVIVE COMPLETION OF THE TERMINATION OF ANY AGREEMENTS BETWEEN SELLER AND BUYER FOR ANY REASON.**

- (c) For purposes of this Agreement, the term "Affiliate" shall mean a Party's ultimate parent company and any company more than 50% owned directly or indirectly by such ultimate parent company and for greater certainty, in the case of a Party being a partnership, a partner of the partnership shall be considered an Affiliate.

10. FORCE MAJEURE/BUSINESS DISRUPTION:

- (a) Buyer shall not be liable to the Seller for any failure to perform any obligation to the extent such failure was caused by Force Majeure. The term "Force Majeure", as used herein, means any cause not reasonably within the control of the parties and shall include, but not be limited to, the following: (i) physical events such as acts of God, disease, plague, landslides, lightning, earthquakes, fires, storms or storm warnings, such as hurricanes, which result in evacuation of the affected area, floods, washouts, explosions, breakage or accident or necessity of repairs to machinery or equipment or lines of pipe; (ii) weather related events affecting an entire geographic region, such as low temperatures which cause freezing or failure of equipment or lines of pipe; (iii) material disruption in raw material supply; (iv) material interruption and/or curtailment of Buyer's manufacturing or production; (v) interruption and/or curtailment of transportation and/or storage; (vi) acts of other such as terrorist attacks, strikes, lockouts or other industrial disturbances, riots, sabotage, insurrections or wars; and (vii) governmental actions requiring the parties to comply with any court order, law, statute, ordinance, regulation, or policy having the effect of law promulgated by a governmental authority having jurisdiction.
- (b) Notice. If Buyer's performance is prevented by Force Majeure, it will provide notice to the Seller. Initial notice may be given orally; however, written notice with reasonably full particulars of the event or occurrence is required as soon as reasonably possible.
- (c) Consequences. Upon providing notice of Force Majeure to Seller, Buyer will be relieved of its obligation, from the onset of Force Majeure event, to make delivery of Product to the extent and for the duration of Force Majeure, and shall not be deemed to have failed in such obligations to Seller during such occurrence or event. For the duration of the Force Majeure, Buyer may, in its sole discretion, allocate any available supply of Product among Buyer's existing customers (including Buyer's Affiliates) and deliver to Seller its allocation of such Product. Under no circumstance shall Buyer be obligated to cure any deficiencies in deliveries of Product caused by Force Majeure.

11. CONFIDENTIALITY:

Seller agrees that all offers, prices, delivery terms, and other information exchanged are confidential and, except as required by law, all information shall be kept strictly confidential and shall not be disclosed to any other person or company without the prior written consent of Buyer.

12. COMPLIANCE WITH LAWS:

The Seller and the Buyer shall comply with the relevant provisions of any national, state, provincial or local law or ordinance and all lawful orders, rules and regulations issued thereunder, which are applicable to the operation of the Seller's or the Buyer's respective businesses and the delivery and sale of Product.

13. GOVERNING LAW/CONSENT TO JURISDICTION/JURY WAIVER:

- (a) Seller acknowledges and agrees that any transactions between Buyer and Seller will be governed by and construed in accordance with the substantive laws of the State of Idaho and, to the extent applicable, the federal Electronic Signatures in Global and National Commerce Act. Seller agrees that any legal proceedings arising from these transactions may be maintained in the courts of the Fourth Judicial District of the State of Idaho, and Seller consents to the jurisdiction and venue of these courts.
- (b) **TO THE FULLEST EXTENT NOT PROHIBITED BY LAW, SELLER AND BUYER WAIVE ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND ANY RELATED AGREEMENT, AND THE OBLIGATIONS AND TRANSACTIONS ARISING UNDER OR CONNECTED TO THEM. SELLER AND BUYER EACH REPRESENT TO THE OTHER THAT THIS WAIVER IS KNOWINGLY, WILLINGLY, AND VOLUNTARILY GIVEN.**

14. MISCELLANEOUS:

- (a) This Agreement and any related Order Confirmation(s) constitute the full and complete agreement between the Parties hereto related to the subject matter hereof and supersede all prior or contemporaneous understandings, statements, or agreements between the Parties on such subject matter. Seller acknowledges and agrees that no employee, officer, agent or representative of the Buyer has the authority to make any representations, statements or promises in addition to or in any way different than those contained herein, and that it is not agreeing to this Agreement in reliance upon any representation, statement or promise of the Buyer except as expressly stated herein. No changes, amendments or clarifications of any of this Agreement shall be valid or effective unless in writing and signed by an authorized representative of the Buyer.
- (b) All Order Confirmations issued by the Seller to the Buyer incorporate this Agreement as if such provisions were fully set forth in such Order Confirmations. No other terms and conditions, whether unilaterally altered or deleted herein, or otherwise presented, shall have any application, or any transactions occurring pursuant thereto, unless this Agreement is specifically and formally amended in writing by the Buyer and the Seller. (c) Each remedy contained herein shall be cumulative and in addition to any other remedy provided by law. The failure of either Party to insist on strict performance of any provision herein, or to take advantage of any right hereunder, shall not be construed as a waiver of such provision or right. In any dispute, the prevailing party shall be entitled to an award of its reasonable attorney fees and costs incurred therein.
- (c) This Agreement, and all the terms and provisions hereof, shall enure to the benefit of and be binding upon the Parties hereto, and their respective heirs, executors, administrators, personal representatives, successors and permitted assigns.
- (d) All purchases hereunder are intended for agricultural uses. If Seller uses or repurchases Product for any non-agricultural use, Seller will inform Buyer prior to such use or rebuy; Seller warrants and agrees to comply with all statutes, ordinances, regulations and requirements of all governmental entities, whether federal or state, county or municipal, concerning the storage or use of the Product; and Seller hereby agrees to indemnify, defend and hold harmless Marion Ag Service, Inc. And its affiliates, and their respective directors, employees and agents, from and against all expenses (including attorneys' fees), liabilities, fines and claims of any kind or nature directly or indirectly arising or alleged to arise out of the use of Product for any non-agricultural purpose whatsoever.

- (e) Buyer is an equal opportunity employer and is a United States government contractor. Therefore, this Contract is subject to the rules and regulations imposed upon contractors and subcontractors pursuant to 41 C.F.R. Chapters 60 and 61. Unless this Contract is exempt by regulations issued by the Secretary of Labor, there is incorporated herein by reference the following: 41 C.F.R. 60-1.4; 41 C.F.R. 60-250.4 and 61-25.10 and 41 C.F.R. 60-741.4.
- (f) A signed copy of this Agreement delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as deliver) of an original signed copy of this Agreement.
- (g) Seller agrees to carry and maintain insurance appropriate for its business and reasonably similar to those carried and maintained in similar businesses.

15. NO THIRD-PARTY BENEFICIARIES:

Any Order Confirmation is solely for the benefit of and shall inure to the benefit of. Seller and Buyer and shall not otherwise be deemed to confer upon or give to any third party any right, claim, cause of action or other interest herein.

16. SEVERABILITY:

The invalidity or unenforceability of any provision of the Order Confirmation shall not affect the validity or enforceability of its other provisions.

17. COUNTERPARTS AND CONVERSION.

This Agreement, or any amendment to this Agreement, may each be executed in as many counterparts as necessary or convenient, including both counterparts that are executed at paper and counterparts that are electronic records and are executed electronically. Each counterpart of such document, when so executed, shall be deemed an original but all such counterparts shall constitute one and the same document. A manually or electronically executed counterpart of this Agreement, or any amendment to this Agreement, may be delivered by any means, including without limitation by electronic means via website or portal or email, or by facsimile, telecopy, or other electronic imaging. Any counterpart may be converted from paper to electronic form, or from electronic form to paper, at the discretion of the party receiving such counterpart, and such converted counterpart shall be deemed an original.

18. AMENDMENTS.

This Agreement may only be amended by a writing signed by the parties hereto, or by an electronic record that has been electronically signed by the parties hereto and has been rendered tamper evident as part of the signing process. The exchange of email or other electronic communications discussing an amendment to this Agreement, even if such communications are signed, does not constitute a signed electronic record agreeing to such an amendment.

19. ELECTRONIC DOCUMENT.

Electronic records and signatures may be used in connection with the execution of this Agreement. This Agreement is an electronic record executed by the parties hereto using electronic signatures. This Agreement is just as legally valid and enforceable as if the parties hereto had signed it on paper using a handwritten signature.